IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6863 OF 2004

Varsha Yogesh Babar ...Petitioner

Versus

Yogesh Madhukar Babar ...Respondent

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Mr. Uday Warunjikar, counsel for Petitioner

Smt. P.R. Ghorpade with Mr.Y.D. Pawar, counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 4TH MARCH, 2005

P. C.:-

1. Heard Mr. Warunjikar, the learned counsel for the petitioner and Smt. Ghorpade, the learned counsel for the respondent.

2. Rule. Smt. Ghorpade with Mr. Pawar, the learned counsel for the respondent waive service for the respondent-husband. Rule is taken up for final hearing forthwith.

3. The respondent husband has filed a marriage petition No. 157 of 2002 U/sec. 13 of the Hindu Marriage Act in the Court of the Learned C.J.S.D. at Pune, seeking decree of divorce. The said petition

was filed on or about 22.6.2002 whereas the marriage between parties was solemnised on 29.2.2000 at Pune. After filing her reply opposing the petition filed by the husband, on 23.10.2000, the petitioner wife submitted an application at Exh.16 for interim alimony. The husband filed his say at Exh.17 and opposed the application. After hearing both the parties, the learned Judge of the trial Court vide his order dated 30.1.2003 was pleased to allow the application at Exh.16, as under:-

a. The petitioner shall pay the amount of Rs.10,000/- p.m. to the respondent towards the interim alimony from the date of this application till the decision of main petition.

b. The petition shall further pay the amount of Rs.1000/- per date fixed by the court provided the respondent attends the court on the date fixed.

c. The petitioner shall further pay the amount of Rs.5000/- towards the expenses of the application.

4. This order passed below Exh.16 came to be challenged in writ petition No. 4277 of 2003 which was disposed of by this Court on 30.9.2003. This Court was of the view that it was necessary to re-examine the application for interim alimony, in accordance with law after giving further opportunity to both the sides to adduce necessary materials placed on record with reference to the income of the petitioner-husband and other belongings and the fact that the husband continues to be the member of the Hindu Undivided family of which his father was the Karta. At the same time, it would be open to the respondent-wife to produce further evidence on record in support to her contentions regarding the quantum of interim alimony. But this Court imposed certain conditions for the application being remanded for fresh hearing i.e. the application at Exh.16. The said conditions were worded as under:-

> " The impugned judgment and order is set aside to the extent it has determined the interim alimony at the rate of Rs.10,000/- per month. In so far as the amount quantified towards litigation expenses being Rs.5000/- towards expenses of the application, it will be open to the court to provide for such expenses at the

time of disposal of the application which is restored to the file of the trial Court. However, by way of litigation expenses before this court, the petitioner-husband shall pay sum of Rs.7,500/- to the respondent-wife within two weeks from today, failing which, the order as passed by the Court below will stand revived."

5. Admittedly, the cost of Rs.7,500/- was not deposited by the husband within two weeks from 30.9.2003 and for the first time he submitted an application before the trial Court on 3.1.2004 for remittance of Rs.7,500/-. This was opposed by the wife and inspite of such opposition, the trial Court by order dated 22.6.2004 has rejected the application submitted by the wife. This was done by the impugned order dated 22.6.2004 and the trial court proceeded on the presumption that in writ petition No.4277 of 2003 the order passed below Exh. 16 was set aside. The approach of the trial court is unsustainable and it was not within the domain of the Court below to draw such presumptions unless the time limit of two weeks originally set out was extended by this Court only on application to be made by the husband. So long as the order passed by this Court was not existing, the trial Court could not be proceeded on

the notice that the order passed below Exh.16 was set aside.

6. Hence, this petition succeeds and the same is hereby allowed. The impugned orders dated 22.6.2004 passed below Exh.20, 25 and 26 are hereby quashed and set aside.

7. Rule made absolute accordingly with no order as to costs.

8. However, it is clarified that this order would not come in the way of the husband in moving an appropriate application in writ petition No. 4277 of 2003.

9. Certified copy is expedited.